

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Access Charge Reform for Incumbent
Local Exchange Carriers Subject To
Rate-Of-Return Regulation

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CC Docket No. 98-77

COMMENTS OF VIRGIN ISLANDS TELEPHONE CORPORATION

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SUMMARY

Vitelco urges the Commission not to paint rate-of-return carriers and price cap carriers with the same brush in the access reform proceeding. While Vitelco supports the Commission's goal of bringing access charges in line with the principles of cost causation, it does not and cannot support a system that ignores critical differences between price cap and rate-of-return local exchange carriers. Vitelco's objection to such a homogeneous approach to access reform is heightened by the fact that such a structure would be devastating to the universal service system on the U.S. Virgin Islands. Worse yet, the Commission's recommendations have not been thoroughly tested in the marketplace. Instead of embarking on the path of experimental regulations, the Commission should allow itself adequate time to determine whether the price cap access reform effort would, in fact, work for rate-of-return carriers. If, however, the Commission determines that it will enact reforms in the near future, it should do so in a manner that recognizes the inherent differences between the two classes of carriers.

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The Virgin Islands Telephone Corporation ("Vitelco") hereby submits these comments in response to the Federal Communications Commission's ("Commission" or "FCC") Notice of Proposed Rulemaking in the above-captioned proceeding.¹ Vitelco urges the Commission to defer revising access charges for rate-of-return ("ROR") local exchange carriers ("LECs") until it is certain that such changes will not detrimentally affect universal service. If, however, the Commission determines that it should move forward with modifications now, it should adopt rules that recognize the inherent difference between price cap LECs and ROR LECs.

I. INTRODUCTION

Vitelco is the incumbent local exchange carrier for the United States Virgin Islands. The service territory of Vitelco covers the islands of St. Croix, St. Thomas, St. John and Water

¹ Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, CC Docket No. 98-77, FCC 98-101 (rel. June 4, 1998) (Notice of Proposed Rulemaking) ("*Notice*").

Island. Vitelco serves approximately 60,000 access lines on these four small islands located in the middle of the Caribbean Sea. In addition, Vitelco's dispersed service territory is, at the same time, rural and insular. As a result, telephone service in the U.S. Virgin Islands must be provided at costs that are significantly higher than the national average. Thus, Vitelco has a keen interest in ensuring that access charge reform does not negatively impact affordability of service on the islands.

The Commission's *Notice* proposed to reform the access charge regime LECs that are subject to ROR regulation. The FCC states that its guiding principle for the Commission's effort is that access charges must be brought in line with cost causation principles. To that end, the FCC has tentatively concluded that access charge rules for ROR LECs should be similar to the rules it established for price cap LECs. Under the FCC's proposal, a higher percentage of access charges would be flat-rated (non-traffic sensitive costs) while a correspondingly lower percentage would be usage sensitive (traffic sensitive costs). The Commission also plans to increase the subscriber line charge ("SLC") for multi-line customers. It proposes to adopt a new presubscribed interexchange carrier charge ("PICC") to replace the per-minute carrier common line charge and transfer the transport interconnection charge ("TIC") and line port charges to common line categories. The new rules will establish a separate rate element to recover costs associated with tandem switch multiplexing. The FCC also proposes other changes such as a voluntary call set up charge and reallocation of general support facility investment costs.

II. ACCESS CHARGE RATE STRUCTURES FOR RATE-OF-RETURN LOCAL EXCHANGE CARRIERS MUST REFLECT MARKET AND OPERATIONAL REALITIES AND ENSURE AFFORDABLE SERVICE TO END-USERS

A. Rate of Return Carriers Are Unique

ROR carriers differ significantly from price cap carriers in a variety of ways. First ROR carriers generally serve rural areas. Because the areas are rural, customers are often irregularly dispersed throughout the service territory. As a result of the scattered nature of the territories, ROR carriers generally have longer loop lengths than price cap carriers. ROR carriers also have much smaller customer bases, which result in lower economies of scale. They also have significantly different costs, which are often higher than their urban counterparts.² In addition, the limited customer base of ROR carriers requires them to have a relatively higher dependence on access revenues.

Unfortunately, the *Notice* pays little more than lip service to the fact that ROR LECs have significantly different operational characteristics than their price-cap counterparts. The *Notice* recognizes the distinction between ROR LECs and price caps LECs and, surprisingly, dismisses these differences without any analysis.³ To that end, the Commission stated that the rules for ROR LECs will track those of price cap LECs, unless a showing can be made that “different rules [are required] to achieve the goal of fostering an efficient, competitive marketplace.”⁴ These regulations will place additional burdens on ROR LECs because they will have to track costs in an unreasonably detailed manner. For ROR LECs the burdens associated with such a level of tracking clearly exceeds the benefits to be achieved through such reforms.

² *Notice* ¶ 3.

³ *See Id.*

Different rules are also necessary for ROR carriers because their operating environment requires it. Some of the ROR LECs, including Vitelco, operate under extreme operating conditions.⁵ Vitelco's situation, in particular, demonstrates that ROR LECs should have an access charge regime that is dissimilar to that of price cap LECs. For example, comparable economies of scale cannot be achieved for Vitelco because the U.S. Virgin Islands is a rural region. In fact, there are no significant urban areas in the territory that would allow Vitelco to offer low cost service. The largest town in the U.S. Virgin Islands, Charlotte Amalie, has only 9,822 telephone lines. Overall, the company provides common carrier service to only 59,725 access lines.⁶

The U.S. Virgin Islands is also an unusually high-cost area due to other geographic factors including frequent tropical storms and hurricanes (most recently Hurricanes Marilyn and Hugo), a service territory divided by water, and a depressed tourism-based economy. Because significant parts of the islands were formed from a volcano, the islands' topography is largely volcanic rock. This makes every aspect of the provision of telephone service including construction, ongoing maintenance, and access to outside plant extremely difficult. Additionally, costs on the islands continue to increase because telecommunications equipment must be routinely replaced due to the Islands' extreme weather conditions, including heat, corrosive salt air, and wind damage.

⁴ *Id.*

⁵ Rate-of-return LECs "are not ... a homogenous group, and their operating conditions vary significantly." *Id.* ¶ 14.

⁶ This qualifies Vitelco as a "rural telephone company." *See* 47 U.S.C. § 153(37).

In addition to its often inhospitable weather conditions, the U.S. Virgin Islands are completely isolated from the mainland United States -- 1200 miles off the coast of Florida. Because the U.S. Virgin Islands are not accessible through efficient transportation networks that exist in the continental United States, manpower, equipment, and all other materials necessary for the provision of service must be shipped in at a much higher cost. These costs are recurrent because the U.S. Virgin Islands lacks a production-based economy. As such, the costs result in higher rates for consumers and endangers universal service. The Commission should not exacerbate this problem.

The fact that nearly a quarter of the Islands' population live beneath the poverty line⁷ heightens the problems associated with the extreme cost of providing service. Telephone service is difficult to maintain even for those above the poverty line because the average disposable income in the U.S. Virgin Islands is only 60% of the United States while the cost of living is 30% higher. Thus, any rate increase caused by access charge reform could render telephone service unaffordable for many residents and have an adverse affect on subscribership levels, which are already significantly below that of the United States.⁸

⁷ The 1990 U.S. Census reported that 23.2 percent of the people in the U.S. Virgin Islands live below the poverty line. 1990 Census of Population, Social and Economic Characteristics, Virgin Islands of the United States (1990 CP-2-55). In the mainland U.S., less than 14 percent of the population lives below the poverty line.

⁸ The United States enjoys telephone penetration rates of nearly 94 percent while the Virgin Islands has a penetration rate of approximately 87 percent. The Commission has noted that "subscribership levels provide relevant information regarding whether consumers have the means to subscribe to universal service and, thus, represent an important tool in evaluating the affordability of rates." *Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, 8838 (1997) (Report and Order) (footnote omitted) ("*Universal Service Order*").

B. The Commission Must Avoid Taking Any Actions That Could Jeopardize The Goals Of Universal Service

Section 254 was designed to encourage the Commission and the states to work together to preserve and advance universal service. To that end, Congress directed the Commission to develop universal service mechanisms that are explicit, specific, predictable and sufficient. The universal service goal of moving from implicit to explicit charges is inextricably linked to access charge reform because access charge reform is being pursued in part to further the goal of making universal service explicit.⁹ Therefore, the Commission's access charge reform efforts must be consistent with the likely impact on universal service.

Congress recognized the unique universal service needs of insular, rural and high cost areas when it enacted the 1996 Act.¹⁰ Therefore, the Commission was directed to ensure that consumers in insular, rural, and high cost areas receive telecommunications service at rates comparable to consumers in urban areas.¹¹ In effect, the 1996 Act mandated that the FCC adopt special universal service protections for insular carriers. The Commission, therefore, is obligated to enact access charge reform in a manner that recognizes the special status of Vitelco and similarly situated carriers.¹²

⁹ "Through this Order and our accompanying *Access Charge Reform Order*, we . . . set in place rules that will identify and convert existing universal service support . . . to explicit competitively neutral federal universal service support mechanisms." *Id.* at 8782.

¹⁰ H.R. Conf. Rep. No. 104-458 at 131 (1990) reprinted in 1996 U.S.C.C.A.N. 124, 142-3. Joint Explanatory Statement of the Committee of Conference.

¹¹ 47 U.S.C. § 254(b)(3).

¹² The *Universal Service Order* recognizes the U.S. Virgin Islands as insular. 12 FCC Rcd at 8997.

In accordance with this statutory mandate, access charge reform must not compromise existing high-cost support mechanisms because such mechanisms are critical to supporting affordable, basic service rates in the U.S. Virgin Islands. Affordable rates in the U.S. Virgin Islands may become impossible to achieve under the regime proposed by the FCC. As indicated by Vitelco in the Universal Service docket, if the FCC retains its proposed 25%-75% federal-state split Vitelco estimates that its end-user rates would need to increase a whopping 40%. Worse yet, if the Commission implements access reform for ROR carriers in a vacuum, even steeper increases may result. It is unlikely that the residents of the U.S. Virgin Islands could withstand such rate shock without a serious reduction in subscribership. Access charge reform, without any thought for its resulting effects, will harm universal service in the U.S. Virgin Islands by compounding other increases in end-user rates through SLC increases and through IXC bills as they pass the PICC charges back to end users through a flat rate charge.¹³ The Commission must avoid rushing access reform and take a long-term, comprehensive view towards its access charge decisions.

III. IT IS PREMATURE TO IMPLEMENT ACCESS CHARGE REFORMS FOR RATE-OF-RETURN CARRIERS AT THIS TIME

The Commission's tentative conclusions to implement reforms in the short-term are premature. Any reform should not be implemented at least until the Commission has had an adequate opportunity to modify universal service support mechanisms for ROR carriers and to evaluate the results of access charge reforms for price cap carriers. As noted above, Vitelco is

¹³ The major interexchange carriers have demonstrated little reluctance to impose some form of flat-rate charge directly on consumers in order to "offset" the PICC. This process has resulted in an unexpected increase in customer bills. See Mike Mills, *AT&T Imposing Fee on Residential Users*, Wash. Post, May 7, 1998, at C11.

deeply concerned that immediate changes to the access charge rules applicable to ROR carriers without contemporaneous revisions to universal service mechanisms may result in rate shock to end users and thus undermine the FCC's goals of affordable service.

As evidenced by the results of access reform for price-cap carriers, there is no question that shifting costs among rate elements will lead to direct increases in flat-rate, end-user charges. Take, for example, the Commission's proposals to shift line port and transport interconnection charges to the common line categories. Since the Commission's goal also is to eliminate the carrier common line charge, these charges invariably, as the *Notice* suggests, will be recovered through a combination of the existing SLC and potentially a new PICC. Any increase in such flat-rate charges would be particularly burdensome for many of Vitelco's subscribers who rely extensively on universal service support mechanisms and would be particularly devastating to the Virgin Islands' fragile post-hurricane economic recovery. As previously stated, line penetration rates in the Islands are far below mainland averages, as is average disposable income.

In addition, open questions remain as to whether the access charge framework adopted for price-cap carriers has been effective and whether application of similar rules to ROR carriers would be in the public interest. For example, the Commission itself has questioned whether long distance carriers have been appropriately passing through reductions in per-minute access charge rates in the form of lower rates to consumers.¹⁴

¹⁴ See Letter from Chairman William E. Kennard of Feb. 26, 1998 to Major Interexchange Carriers; Statement of FCC Chairman William E. Kennard on Access Charge Reductions of Aug. 13, 1998. In addition, the Commission's price cap rules have been appealed by several local exchange carriers and long distance carriers. *Southwestern Bell Telephone Com. v. FCC* (consolidated cases beginning at No. 97-2618 (8th Cir. Filed Oct. 28, 1997)).

Further, as the Commission noted in its *Notice*, “access reform for the smaller, rate-of-return LECs may raise new or different issues that we did not have to address” in the price cap carrier proceeding.¹⁵ Vitelco is concerned that the extent of these “new or different” issues may not be fully understood until the Commission has had the opportunity to assess the results of the new price-cap carrier framework and determine whether this effort has been successful and ultimately benefits consumers.

IV. IF THE COMMISSION NONETHELESS DECIDES TO REFORM ITS ACCESS CHARGE FRAMEWORK IN THE SHORT-TERM, IT SHOULD DECLINE TO ADOPT A “ONE-SIZE FITS ALL” APPROACH FOR BOTH PRICE CAP AND RATE-OF-RETURN CARRIERS

In the *Notice*, the Commission tentatively concludes that it should “adopt rate structure modifications for rate-of-return LECs that are similar to those that were adopted for price cap LECs in the *Access Charge Reform Order*.”¹⁶ With respect to common line cost recovery, the Commission seeks comment on the appropriate level for the SLC,¹⁷ whether “the PICC is an effective cost recovery mechanism for rate-of-return LECs’ common line costs,”¹⁸ and if so, asks the extent to which “PICC and [carrier common line] charges for rate-of-return LECs should be comparable to those of price cap LECs.”

If the Commission decides to proceed with access charge reform before new universal service mechanisms for rural LECs are in place, it must ensure that changes to common line rate elements do not undermine the goal of maintaining affordable service. One critical aspect of

¹⁵ Notice ¶ 4.

¹⁶ *Id.* ¶ 35.

¹⁷ *Id.* ¶ 40.

such an effort should be to ensure that the SLC does not increase to levels that are beyond the amount presently supported by universal service. Along similar lines, other flat-rated charges, such as the PICC, should not rise to levels that make service unaffordable if IXC's are permitted to pass these charges directly through to end users. Experience in the context of access reform for price-cap carriers has demonstrated IXC's' willingness to pass-through the PICC (generally as a flat-rate surcharge) directly to consumers, and these charges in turn will impact affordability of service and undermine the goal of ensuring universal service if they exceed supported levels.

Another important principle should be to gradually phase-in the reallocation of usage-sensitive charges to flat-rate elements. By continuing to rely on a combination of flat-rate and usage-based per minute common line and traffic sensitive charges, the Commission may reduce the possibility of rate shock to end users and promote the affordability of service until such time as a new universal service support mechanism is in place.

To this end, the Commission should decline to incorporate the residual TIC into the common line rate structure because such a proposal will not facilitate the transition to a rational rate structure.¹⁸ The TIC largely is a product of the separations process and the high cost of providing transport in rural and insular areas, such as those which exist throughout Vitelco's territory. Attempting to move these transport costs to the common line category is not consistent with cost-causative principles and, moreover, will only serve to delay the time when the CCL can be reduced or eliminated. The Commission should allow ROR LECs to continue recovering the residual TIC through a per-minute rate structure.

¹⁸ *Id.* ¶ 41.

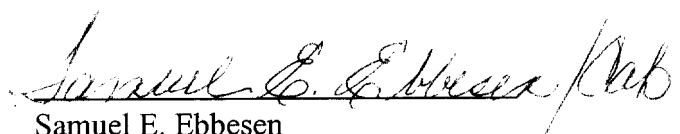
¹⁹ *Id.* ¶ 70.

Lastly, to help offset any potential rate shock to end users, the Commission should give ROR carriers some flexibility in implementing any revised access charge rate framework to address circumstances unique to their operating territories. For example, carriers should have the flexibility to recover common line costs either through the CCL or flat rate charges, even if they have not reached any maximum cap allowed for the SLC or PICC. These and potentially other measures could allow carriers to continue to fully recover their costs, while ensuring that end-user rates remain affordable.

V. CONCLUSION

For all the foregoing reasons, Vitelco urges the Commission to refrain from making hasty revisions to access charge regime for ROR LECs that may detrimentally affect universal service. In the alternative, if the Commission determines that it should move forward with modifications now, it should adopt rules that are specifically tailored for ROR LECs.

Respectfully submitted,



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